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REMARKS

Claims 1 through 10 are currently pending in the application.

Applicant acknowledges with appreciation that the Examiner has indicated that independent claims 9 and 10 remain allowed. Additionally, Applicant acknowledges the indication of allowable subject matter in claims 2, 4, and 8.

Claims 1, 3, 5, 6, and 7 are rejected under 35 U.S.C. §102(b) or §103(a) over U.S. Patent No. 5,995,476 to Kim (hereinafter "Kim"), or over Kim in view of U.S. Patent No. 5,854,867 to Lee, et al. (hereinafter, "Lee").

Independent claim 1 recites, in part, that "said laser source and said auxiliary electrical component being mounted on a general plane of extension of a submount. (emphasis added)"

Applicant respectfully submits that Kim fails to disclose or suggest that photo-detectors 43/53 are mounted on a general plane of extension of the submount as recited by claim 1.

The Office Action agrees that Kim discloses photo-detectors that are "disposed on the substrate 22," but adds that "it is believed that the photo-detectors are also mounted on the submount 31 as clearly shown in Fig. 2." (Office Action at page 6, lines 2 – 4).

However, Kim clearly discloses that the photo-detectors 43/53 are mounted on substrate 22, which is *perpendicular to* submount 31, rather than on submount 31.

Kim expressly discloses the positioning of photo-detectors 43/53 at least three times, and each time as being "installed on" or "disposed on" substrate 22, rather than submount 31 (col. 4, lines 18 – 20; col. 2, lines 62 – 63; and col. 2, lines 14 – 17). If Kim had meant to disclose or suggest that the photo-detectors were mounted on submount 31, he could have expressly done so, as he did for light sources 41/51 (see, e.g., claim 2, col. 4, lines 5 – 7; col. 2, lines 54 – 55; and

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col. 2, lines 6 – 7), and for a different photo-detector 33 that is located on the upper surface of submount 31 (col. 2, lines 55 – 57).

The Office Action asserts that Figure 2 discloses that photo-detectors 43/53 are mounted on the submount. However, Kim's drawing in Figure 2 is "silent" on whether photo-detectors 43/53 are jointly mounted on both substrate 22 and submount 31. Kim never discloses or suggests that photo-detectors 43/53 could be mounted on submount 31 as the Office Action asserts. There is no indication on Figure 2 that photo-detectors 43/53 are mounted on submount 31. At best, it could be said that Figure 2 in Kim shows photodetectors 43/53 are positioned on substrate 22 in such a way as to "abut" submount 31, where Figure 2 as drawn is interpreted to be consistent with the written specification and claims in Kim.

A similar set of facts occurred in *In re Meng*, 492 F.2d 843 (CCPA 1974), where the prior art references were void of written content rendering a pending application obvious, and the only alleged disclosure of the claimed limitation at issue was present in a portion of a utility patent drawings in one of the references. The *Meng* court determined that the pertinent question to be answered was: "would one of ordinary skill in the art, present with that problem and those...prior patents – and totally unaware of appellants' solution – be led to do what appellants' did?" *Meng*, 492 F.2d at p. 846. In that instance, the *Meng* court did not find that the claim at issue was rendered obvious. In so doing, the court upheld the established rule that "references must be evaluated by ascertaining the facts fairly disclosed therein as a whole." *In re Schuman*, 361 F.2d 1008, 1012, 53 CCPA 1251, 1255 (1966). As applied to the present situation, a person skilled in the art, when presented with the Kim patent – and unaware of the present solution as recited in claim 1 – would not have been led to disregard the written specification as is asserted by the Office Action and to mount photo-detectors 43/53 to the submount 31 as recited in claim 1.

Further, for an anticipation rejection to be proper, "the identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applying this principle to the present matter, Kim does not show the identical invention in complete detail as recited in claim 1.

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Lee is not asserted by the Office Action as disclosing or suggesting a laser source and an auxiliary electrical component mounted on a submount as claimed.

Therefore, for at least the reasons above, Kim, alone or in combination with Lee, does not disclose or suggest claim 1. Accordingly, claim 1 is patentable over Kim, alone or in combination with Lee.

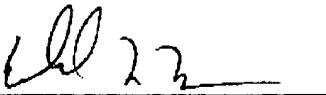
For at least the same reasons as provided for independent claim 1, dependent claims 3, 5, 6, and 7 are patentable over Kim, alone or in combination with Lee.

For these reasons, Applicant respectfully submits that claims 1 through 10 are allowable over the cited art, taken alone or in combination, and earnestly solicits reconsideration and withdrawal of all pending rejections and issuance of a Notice of Allowance.

In the alternative, Applicant submits that the instant response places the instant application in better condition for appeal. Accordingly, entry and consideration of the instant response are respectfully requested.

Respectfully submitted,

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